

Chapter 325

(House Bill 243)

AN ACT concerning

Fairness in Negotiations Act

FOR the purpose of establishing as an independent unit of State government a Public School Labor Relations Board to assume certain duties previously held by the State Board of Education; requiring the Public School Labor Relations Board to hear certain controversies and disputes; establishing that certain decisions by the Public School Labor Relations Board are final; requiring the Public School Labor Relations Board to adopt certain rules and regulations related to the designation of an exclusive representative; requiring the Public School Labor Relations Board to supervise certain elections concerning employee representation; requiring a public school employer and an employee organization to negotiate in a certain manner under certain circumstances; including procedures regarding employee transfers and assignments among the matters a public school employer must meet and negotiate with a certain employee organization on request; establishing certain processes and requirements for the resolution of disputes over the negotiability of certain topics; authorizing the Public School Labor Relations Board to adopt certain regulations, guidelines, and policies; repealing certain provisions of law regarding the resolution of certain impasses in negotiations; requiring the Public School Labor Relations Board to facilitate the beginning of mediation of certain disputes within a certain period of time and in a certain manner; establishing a certain process for the mediation of certain disputes; requiring a mediator to conclude certain mediations within a certain period of time; requiring a public school employer and employee organization to share certain dispute resolution costs equally; establishing certain processes for arbitration of certain disputes left unresolved by mediation; requiring the Public School Labor Relations Board to facilitate certain arbitration processes within a certain period of time and in a certain manner; requiring the Public School Labor Relations Board to issue a certain award at the end of arbitration; subjecting certain negotiated provisions or decisions to certain provisions of law concerning the fiscal relationship between public school employers and certain governing bodies; requiring public school employers to renegotiate certain agreements with employee organizations under certain circumstances in a certain manner; specifying the manner of appointment, membership, duties, and responsibilities of the Public School Labor Relations Board; providing for the staffing of the Public School Labor Relations Board; providing for the staggering of terms of the members of the Public School Labor Relations Board; requiring the Public School Labor Relations Board to decide certain controversies and disputes involving public school employers and employee organizations; authorizing a

member of the Public School Labor Relations Board to petition a circuit court to seek enforcement of an order of the Public School Labor Relations Board; providing that a certain hearing and determination under this Act is a contested case; establishing the significance of certain prior orders, actions, and opinions of the State Board of Education in deciding certain matters arising after the enactment of this Act; providing for the application and construction of this Act; requiring the Public School Labor Relations Board to report to the General Assembly on or before a certain date; providing for the termination of this Act; defining certain terms; making stylistic changes; and generally relating to public school education, collective bargaining, and dispute resolution.

BY repealing and reenacting, with amendments,

Article – Education

Section 2–205(e), 6–401, 6–405(f), 6–408, 6–501, 6–506(f), 6–510, and 6–511

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY adding to

Article – Education

Section 6–408.1; and 6–801 through 6–807 to be under the new subtitle
“Subtitle 8. Public School Labor Relations Board”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,

Article – State Personnel and Pensions

Section 3–204

Annotated Code of Maryland

(2009 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Education

2–205.

(e) (1) Without charge and with the advice of the Attorney General, the State Board shall explain the true intent and meaning of the provisions of:

- (i) This article that are within its jurisdiction; and
- (ii) The bylaws, rules, and regulations adopted by the Board.

(2) [The] **EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION AND IN TITLE 6, SUBTITLES 4 AND 5 OF THIS ARTICLE, THE Board** shall decide all controversies and disputes under these provisions.

(3) The decision of the Board is final.

(4) (I) THE PUBLIC SCHOOL LABOR RELATIONS BOARD SHALL DECIDE ANY CONTROVERSY OR DISPUTE ARISING UNDER TITLE 6, SUBTITLE 4 OR SUBTITLE 5 OF THIS ARTICLE.

(II) A DECISION OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD IS FINAL.

6-401.

(a) In this subtitle the following words have the meanings indicated.

(b) **“BOARD” MEANS THE PUBLIC SCHOOL LABOR RELATIONS BOARD ESTABLISHED UNDER SUBTITLE 8 OF THIS TITLE.**

(c) “Employee organization” means an organization that:

(1) Includes certificated employees of a public school employer or individuals of equivalent status in Baltimore City; and

(2) Has as one of its main purposes the representation of the employees in their relations with that public school employer.

[(c)] (D) (1) “Home and hospital teacher” means a teacher employed by a public school employer to provide instructional services to a public school student who is unable to function effectively in the classroom setting due to the student’s medical, physical, or emotional condition.

(2) A home and hospital teacher may teach in:

(i) A private home;

(ii) A hospital;

(iii) A therapeutic center;

(iv) A school; or

(v) Any other appropriate site.

[(d)] (E) (1) “Public school employee” means a certificated professional individual who is employed by a public school employer or an individual of equivalent status in Baltimore City, except for a county superintendent or an individual designated by the public school employer to act in a negotiating capacity as provided in § **[6-408(b)] 6-408(C)** of this subtitle.

(2) In Montgomery County, “public school employees” include:

(i) Certificated and noncertificated substitute teachers employed by the public school employer for at least 7 days before March 1 of the school fiscal year ending June 30, 1978, and each year after; and

(ii) Home and hospital teachers employed by the public school employer for at least 7 days before March 1 of the school fiscal year ending June 30, 2000, and each year after.

(3) In Baltimore County, “public school employee” includes:

(i) A secondary school nurse, an elementary school nurse, and a special school nurse; and

(ii) Supervisory noncertificated employees as defined under § **[6-501(h)] 6-501(I)** of this title.

(4) In Frederick County, “public school employee” includes a social worker employed by a public school employer.

(5) In Prince George’s County, “public school employee” includes home and hospital teachers and Junior Reserve Officer Training Corps (JROTC) instructors.

(6) In Charles County and Garrett County, “public school employee” includes Junior Reserve Officer Training Corps (JROTC) instructors.

(7) In Carroll County, “public school employee” includes:

(i) A registered nurse; and

(ii) Supervisory noncertificated employees as defined under § **[6-501(h)] 6-501(I)** of this title.

[(e)] (F) “Public school employer” means a county board of education or the Baltimore City Board of School Commissioners.

6-405.

(f) (1) The **[State]** Board shall adopt rules and regulations for:

(i) Verifying the number of certificated employees of the public school employer or individuals of equivalent status in Baltimore City who are members in good standing of an employee organization on the date of the certification or who have signed a petition under this section; and

(ii) Holding elections under this section and the certification of their results.

(2) The [State] Board shall provide for supervision of these elections.

(3) The elections shall be held:

(i) In each school facility where public employees are assigned on a regularly scheduled school day;

(ii) In a manner assuring the secrecy of the ballot; and

(iii) On a regular working day for public school employees, between June 1 and June 15, inclusive, except in Baltimore City where the elections shall be held between November 1 and November 15 following the date on which certification of required membership enrollment is made.

(4) In any election held under this section, the employee organization that receives the largest number of votes cast in a unit shall be declared to be the exclusive representative of all public school employees in the unit. If the largest number of votes in the election is cast not to have exclusive representation, a representative may not be designated for the unit.

(5) The public school employer shall provide any assistance required in holding the elections.

6-408.

(a) [(1) In this section, "negotiate" includes the duty to:

(i) Confer in good faith, at all reasonable times; and

(ii) Reduce to writing the matters agreed on as a result of the negotiations.

(2) WHEN A PUBLIC SCHOOL EMPLOYER AND AN EMPLOYEE ORGANIZATION NEGOTIATE UNDER THIS SECTION, THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION SHALL:

(1) CONFER IN GOOD FAITH, AT ALL REASONABLE TIMES;

(2) HONOR AND ADMINISTER EXISTING AGREEMENTS;

(3) MAKE EVERY REASONABLE EFFORT TO CONCLUDE NEGOTIATIONS WITH A FINAL WRITTEN AGREEMENT IN A TIMELY MANNER; AND

(4) REDUCE TO WRITING THE MATTERS AGREED ON AS A RESULT OF THE NEGOTIATIONS.

(B) The agreements may provide for binding arbitration of the grievances arising under the agreement that the parties have agreed to be subject to arbitration.

[(b)] (C) (1) On request a public school employer or at least two of its designated representatives shall meet and negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to salaries, wages, hours, and other working conditions, **INCLUDING PROCEDURES REGARDING EMPLOYEE TRANSFERS AND ASSIGNMENTS.**

(2) Except as provided in paragraph (3) of this subsection, a public school employer or at least two of its designated representatives may negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on other matters that are mutually agreed to by the employer and the employee organization.

(3) A public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law.

(4) A matter that is not subject to negotiation under paragraph (2) of this subsection because it has not been mutually agreed to by the employer and the employee organization may not be raised in any action taken to resolve an impasse under subsection **[(d)] (E)** of this section.

(5) (I) IF A PUBLIC SCHOOL EMPLOYER AND AN EMPLOYEE ORGANIZATION DISPUTE WHETHER A PROPOSED TOPIC FOR NEGOTIATION IS A MANDATORY, A PERMISSIVE, OR AN ILLEGAL TOPIC OF BARGAINING, EITHER PARTY MAY SUBMIT A REQUEST FOR A DECISION IN WRITING TO THE BOARD FOR FINAL RESOLUTION OF THE DISPUTE.

(II) A REQUEST FOR A DECISION SHALL:

1. CLEARLY IDENTIFY EACH TOPIC OF BARGAINING FOR WHICH THE PARTY IS REQUESTING A DECISION; AND

2. BE MADE BEFORE THE BOARD DETERMINES THAT AN IMPASSE HAS BEEN REACHED.

(III) IF THE BOARD RECEIVES A REQUEST FOR A DECISION, WITHIN 7 DAYS AFTER RECEIPT OF THE REQUEST, THE BOARD SHALL ISSUE A LETTER TO THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION THAT REQUESTS WRITTEN BRIEFS IN SUPPORT OF THEIR RESPECTIVE POSITIONS.

(IV) WITHIN 7 DAYS AFTER RECEIPT OF A REQUEST FROM THE BOARD FOR WRITTEN BRIEFS, THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION SHALL DELIVER TO THE BOARD A WRITTEN BRIEF ON THE ISSUE OF WHETHER THE TOPIC IS MANDATORY, PERMISSIVE, OR ILLEGAL IN NATURE.

(V) AFTER RECEIPT OF WRITTEN BRIEFS FROM THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION, THE BOARD SHALL:

1. CONSIDER THE MERITS OF EACH PARTY'S ARGUMENTS;

2. RENDER A DECISION DETERMINING WHETHER THE TOPIC OF NEGOTIATION IS MANDATORY, PERMISSIVE, OR ILLEGAL; AND

3. ISSUE THE WRITTEN DECISION TO THE PARTIES WITHIN 14 DAYS AFTER RECEIVING THE WRITTEN BRIEFS.

(VI) 1. THE BOARD MAY ADOPT REGULATIONS, GUIDELINES, AND POLICIES TO CARRY OUT ITS RIGHTS AND RESPONSIBILITIES UNDER THIS SECTION.

2. TO RESOLVE DISPUTES UNDER THIS SECTION, THE BOARD SHALL DEVELOP A BALANCING TEST TO DETERMINE WHETHER THE IMPACT OF THE MATTER ON THE SCHOOL SYSTEM AS A WHOLE ~~CLEARLY~~ OUTWEIGHS THE DIRECT IMPACT ON THE TEACHERS OR EMPLOYEES.

[(5)] (6) In Montgomery County, the exclusive negotiating agent for the public school employees in a unit and the public school employer shall meet and negotiate under this section the salaries, wages, hours, and other working conditions of all persons actually employed as substitute teachers or home and hospital teachers.

[(c)] (D) The designation of representatives by the employer under this section does not prevent the designated employee organization from appearing before or making proposals to the public school employer at a public meeting or hearing.

[(d)] (E) (1) If, on the request of either party, the [State Superintendent] BOARD determines from the facts that an impasse is reached in negotiations between a public school employer and an employee organization that is designated as an exclusive negotiating agent, [the assistance and advice of the State Board may be requested, with the consent of both parties.

(2) If consent is not given and at the request of either party, a panel shall be named to aid in resolving the differences.

(3) The panel shall contain three individuals chosen as follows:

(i) One member is to be named by each party within 3 days;
and

(ii) The third member is to be chosen by the other two members within 10 days after the request.

(4) The State Board or the panel selected shall meet with the parties to aid in resolving the differences, and, if the matter is not resolved, shall make a written report and recommendation within 30 days after the request.

(5) A copy of the report shall be sent to the representatives of the public school employer and the employee organization.

(6) All costs of mediation shall be shared by the public school employer and the employee organization.

(7) Notwithstanding any other provision of this subtitle, the public school employer shall make the final determination as to matters that have been the subject of negotiation, but this final determination] **THE BOARD SHALL WITHIN 10 CALENDAR DAYS:**

(I) REQUEST LAST AND BEST OFFERS FROM THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION, WHICH MAY NOT INCLUDE ITEMS OR TOPICS NOT PREVIOUSLY RAISED IN THE BARGAINING PROCESS; AND

(II) ORDER THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION TO COMMENCE MEDIATION WITHIN 14 DAYS AFTER THE BOARD'S DETERMINATION THAT AN IMPASSE HAS BEEN REACHED.

(2) THE LAST AND BEST OFFERS SHALL LIST SEPARATELY EVERY TERM OR CONDITION OF EMPLOYMENT IN DISPUTE AND THE DEMAND OF THE PARTY MAKING THE LAST AND BEST OFFER.

(3) WITHIN 5 CALENDAR DAYS AFTER AN ORDER TO MEDIATE, THE PARTIES SHALL SELECT A MEDIATOR BY:

(I) AGREEMENT; OR

(II) ALTERNATE STRIKING FROM A LIST OF SEVEN NEUTRAL PARTIES FURNISHED BY:

1. THE FEDERAL MEDIATION AND CONCILIATION SERVICE; OR

2. THE AMERICAN ARBITRATION ASSOCIATION.

(4) THE MEDIATOR SHALL CONCLUDE THE MEDIATION WITHIN 25 DAYS AFTER CONVENING THE FIRST MEDIATION SESSION.

(5) IF THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION DO NOT REACH AGREEMENT BEFORE CONCLUDING THE MEDIATION, THE MEDIATOR SHALL ISSUE A WRITTEN OFFER TO BOTH PARTIES AND THE BOARD OF SETTLEMENT OF ALL MATTERS RAISED.

(6) WITHIN 5 DAYS AFTER RECEIVING THE PROPOSED SETTLEMENT, THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION EACH SHALL NOTIFY THE MEDIATOR OF ITS INTENT TO:

(I) ACCEPT THE WRITTEN PROPOSED SETTLEMENT; ~~OR~~

(II) ACCEPT THE WRITTEN PROPOSED SETTLEMENT IN PART, AS MUTUALLY AGREED ON BY THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION; OR

~~(III)~~ (III) DECLINE THE PROPOSED SETTLEMENT AND REQUEST ARBITRATION BEFORE THE BOARD.

(7) THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION SHALL SHARE THE COSTS OF THE MEDIATOR EQUALLY.

(8) IF EITHER PARTY DECLINES THE PROPOSED SETTLEMENT AND REQUESTS ARBITRATION, THE BOARD SHALL, WITHIN 5 CALENDAR DAYS, SET A DATE FOR AN ARBITRATION HEARING BEFORE THE BOARD.

(9) THE BOARD SHALL:

(I) OPEN THE ARBITRATION RECORD WITHIN 20 DAYS AFTER RECEIVING EITHER PARTY'S DECISION TO DECLINE THE MEDIATOR'S PROPOSAL;

(II) CONVENE A HEARING;

(III) HEAR TESTIMONY FROM AND RECEIVE SUPPORTING WRITTEN EVIDENCE, AS PROVIDED IN AN ORDER OF THE BOARD, FROM THE PUBLIC SCHOOL EMPLOYER, THE EMPLOYEE ORGANIZATION, AND THE MEDIATOR;

(IV) ADMINISTER OATHS TO WITNESSES DEEMED RELEVANT AND CALLED BY THE BOARD;

(V) ISSUE SUBPOENAS TO COMPEL THE PRODUCTION OF RELEVANT AND NONPRIVILEGED DOCUMENTS AND OTHER TANGIBLE EVIDENCE THAT WOULD ALSO BE SUBJECT TO PRODUCTION BEFORE A HEARING OR AT A HEARING UNDER TITLE 10, SUBTITLE 6, PART III OF THE STATE GOVERNMENT ARTICLE; AND

~~(VI) DECIDE WHETHER TO HEAR EVIDENCE OFFERED THROUGH AN ATTORNEY; AND~~

~~(VII)~~ RECEIVE, HEAR, AND CONSIDER ALL EVIDENCE CONSIDERED RELEVANT BY THE BOARD, WHETHER OR NOT OFFERED THROUGH AN ATTORNEY, INCLUDING:

1. THE WAGES, HOURS, WORKING CONDITIONS, OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT OF SIMILAR PUBLIC EMPLOYEES IN COMPARABLE SURROUNDING JURISDICTIONS AND COMPARABLE JURISDICTIONS OUTSIDE THE STATE; AND

2. THE ABILITY OF THE PUBLIC SCHOOL EMPLOYER AND THE COUNTY SERVED BY THE PUBLIC SCHOOL EMPLOYER TO PAY ~~FROM THE COUNTY'S GENERAL FUND~~, CONSIDERING THEIR EXISTING RESOURCES, THE COSTS OF THE FINAL OFFERS PROPOSED AND OTHER PERSONNEL COSTS.

(10) THE BOARD SHALL CONCLUDE THE HEARING BY ISSUING A WRITTEN ORDER WITHIN 20 DAYS AFTER THE ARBITRATION RECORD IS OPENED.

(11) THE BOARD SHALL ISSUE THE WRITTEN AWARD THAT SELECTS AND ADOPTS:

(I) THE COMPLETE FINAL OFFER OF THE PUBLIC SCHOOL EMPLOYER;

(II) THE COMPLETE FINAL OFFER OF THE EMPLOYEE ORGANIZATION; OR

(III) THE MEDIATOR'S COMPLETE OFFER OF SETTLEMENT.

(12) THE BOARD'S WRITTEN AWARD IS FINAL AND BINDING ON THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION.

(13) THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION SHALL SHARE THE COSTS OF THE HEARING EQUALLY.

(14) ANY NEGOTIATED PROVISION OR DECISION OF THE BOARD is subject to the other provisions of this article concerning the fiscal relationship between the public school employer and the county commissioners, county council, and Mayor and City Council of Baltimore City.

6-408.1.

IF A FISCAL AUTHORITY DOES NOT APPROVE ENOUGH FUNDS TO IMPLEMENT THE NEGOTIATED AGREEMENT, THE PUBLIC SCHOOL EMPLOYER SHALL RENEGOTIATE THE FUNDS ALLOCATED FOR THESE PURPOSES BY THE FISCAL AUTHORITY WITH THE EMPLOYEE ORGANIZATION BEFORE THE PUBLIC SCHOOL EMPLOYER MAKES A FINAL DETERMINATION IN ACCORDANCE WITH A TIMETABLE AND PROCEDURE ESTABLISHED BY THE BOARD.

6-501.

(a) In this subtitle the following words have the meanings indicated.

(b) **“BOARD” MEANS THE PUBLIC SCHOOL LABOR RELATIONS BOARD ESTABLISHED UNDER SUBTITLE 8 OF THIS TITLE.**

(c) **“Confidential employee”** includes an individual whose employment responsibilities require knowledge of the public school employer's posture in the collective negotiation process, as determined by the public school employer in negotiations with an employee organization that requests negotiation on this issue.

[(c)] (D) “Employee organization” means an organization that:

- (1) Includes noncertificated employees of a public school employer; and
- (2) Has as one of its main purposes the representation of the employees in their relations with that public school employer.

[(d)] (E) “Management personnel” includes an individual who is engaged mainly in executive and managerial functions, as determined by the public school employer in negotiation with an employee organization that requests negotiation on this issue.

[(e)] (F) “Noncertificated employee”, in Montgomery County, means only a full-time employee.

[(f)] (G) (1) “Public school employee” means a noncertificated individual who is employed for at least 9 months a year on a full-time basis by a public school employer.

(2) “Public school employee” includes a noncertificated employee in Baltimore City notwithstanding that the noncertificated employee does not work for at least 9 months a year on a full-time basis.

- (3) “Public school employee” does not include:
 - (i) Management personnel;
 - (ii) A confidential employee; or
 - (iii) Any individual designated by the public school employer to act in a negotiating capacity as provided in § **[6-510(b)] 6-510(C)** of this subtitle.

[(g)] (H) (1) “Public school employer” means the county board in each county.

(2) “Public school employer” includes the Baltimore City Board of School Commissioners.

[(h)] (I) “Supervisory employee” includes any individual who responsibly directs the work of other employees, as determined by the public school employer in negotiation with an employee organization that requests negotiation on this issue.

6-506.

- (f) (1) The **[State]** Board shall adopt rules and regulations for:

(i) Verifying the number of public school employees who are members in good standing of an employee organization on the date of the certification or who have signed a petition under this section; and

(ii) Holding elections under this section and the certification of their results.

(2) The [State] Board shall provide for supervision of these elections.

(3) The elections shall be held:

(i) In each school facility where public school employees are assigned on a regularly scheduled school day;

(ii) In a manner assuring the secrecy of the ballot; and

(iii) On a regular working day for public school employees, between June 1 and June 15, inclusive.

(4) In all elections held under this section, the employee organization that receives a majority of the votes cast in a unit shall be declared to be the exclusive representative of all public school employees in the unit. If a majority of the votes in the election are cast not to have exclusive representation, a representative may not be designated for the unit.

(5) The two choices on the ballot that receive the most votes shall be placed on a ballot for a runoff election that shall be held in the same manner as the original election if:

(i) More than one employee organization is on the ballot;

(ii) No employee organization obtains a majority of the votes;
and

(iii) A majority of the votes is not for “not to have exclusive representation”.

(6) The public school employer shall provide any assistance required in conducting the elections.

6-510.

(a) [(1) In this section, “negotiate” includes the duty to:

(i) Confer in good faith, at all reasonable times; and

(ii) Reduce to writing the matters agreed on as a result of the negotiations.

(2)] WHEN A PUBLIC SCHOOL EMPLOYER AND AN EMPLOYEE ORGANIZATION NEGOTIATE UNDER THIS SECTION, THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION SHALL:

(1) CONFER IN GOOD FAITH, AT ALL REASONABLE TIMES;

(2) HONOR AND ADMINISTER EXISTING AGREEMENTS;

(3) MAKE EVERY REASONABLE EFFORT TO CONCLUDE NEGOTIATIONS WITH A FINAL WRITTEN AGREEMENT IN A TIMELY MANNER; AND

(4) REDUCE TO WRITING THE MATTERS AGREED ON AS A RESULT OF THE NEGOTIATIONS.

(B) The agreements may provide for binding arbitration of the grievances arising under the agreement that the parties have agreed to be subject to arbitration.

[(b)] (C) (1) On request, a public school employer or at least two of its designated representatives shall meet and negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to salaries, wages, hours, and other working conditions, including the discipline and discharge of an employee for just cause.

(2) Except as provided in paragraph (3) of this subsection, a public school employer or at least two of its designated representatives may negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on other matters that are mutually agreed to by the employer and the employee organization.

(3) A public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law.

(4) A matter that is not subject to negotiation under paragraph (2) of this subsection because it has not been mutually agreed to by the employer and the employee organization may not be raised in any action taken to resolve an impasse under subsection **[(d)] (E)** of this section.

(5) (I) IF A PUBLIC SCHOOL EMPLOYER AND AN EMPLOYEE ORGANIZATION DISPUTE WHETHER A PROPOSED TOPIC FOR NEGOTIATION IS A

MANDATORY, A PERMISSIVE, OR AN ILLEGAL TOPIC OF BARGAINING, EITHER PARTY MAY SUBMIT A REQUEST FOR A DECISION IN WRITING TO THE BOARD FOR FINAL RESOLUTION OF THE DISPUTE.

(II) A REQUEST FOR A DECISION SHALL:

1. CLEARLY IDENTIFY EACH TOPIC OF BARGAINING FOR WHICH THE PUBLIC SCHOOL EMPLOYER OR EMPLOYEE ORGANIZATION IS REQUESTING A DECISION; AND

2. BE MADE BEFORE THE BOARD DETERMINES THAT AN IMPASSE HAS BEEN REACHED.

(III) IF THE BOARD RECEIVES A REQUEST FOR A DECISION, WITHIN 7 DAYS AFTER RECEIPT OF THE REQUEST, THE BOARD SHALL ISSUE A LETTER TO THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION THAT REQUESTS WRITTEN BRIEFS IN SUPPORT OF THEIR RESPECTIVE POSITIONS.

(IV) WITHIN 7 DAYS AFTER RECEIPT OF A REQUEST FROM THE BOARD FOR WRITTEN BRIEFS, THE PUBLIC SCHOOL EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE SHALL DELIVER TO THE BOARD A WRITTEN BRIEF ON THE ISSUE OF WHETHER THE TOPIC AT ISSUE IS MANDATORY, PERMISSIVE, OR ILLEGAL IN NATURE.

(V) AFTER RECEIPT OF THE WRITTEN BRIEFS FROM THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION, THE BOARD SHALL:

1. CONSIDER THE MERITS OF EACH PARTY'S ARGUMENTS;

2. RENDER A DECISION DETERMINING WHETHER THE TOPIC OF NEGOTIATION IS MANDATORY, PERMISSIVE, OR ILLEGAL; AND

3. ISSUE THE WRITTEN DECISION TO THE PARTIES WITHIN 14 DAYS AFTER RECEIPT OF THE WRITTEN BRIEFS.

(VI) 1. THE BOARD MAY ADOPT REGULATIONS, GUIDELINES, AND POLICIES TO CARRY OUT ITS RIGHTS AND RESPONSIBILITIES UNDER THIS SECTION.

2. TO RESOLVE DISPUTES UNDER THIS SECTION, THE BOARD SHALL DEVELOP A BALANCING TEST TO DETERMINE WHETHER THE

**IMPACT OF THE MATTER ON THE SCHOOL SYSTEM AS A WHOLE ~~CLEARLY~~
OUTWEIGHS THE DIRECT IMPACT ON THE EMPLOYEES.**

[(c)] (D) The designation of representatives by the employer under this section does not prevent an employee organization from appearing before or making proposals to the public school employer at a public meeting or hearing.

[(d)] (E) (1) If, on the request of either party, the **[State Superintendent] BOARD** determines from the facts that an impasse is reached in negotiations between a public school employer and an employee organization that is designated as an exclusive negotiating agent, **[the assistance and advice of the State Board may be requested, with the consent of both parties.**

(2) If consent is not given and at the request of either party, a panel shall be named to aid in resolving the differences.

(3) The panel shall contain three individuals chosen as follows:

(i) One member is to be named by each party within 3 days;
and

(ii) The third member is to be chosen by the other two members within 10 days after the request.

(4) The State Board or the panel selected shall meet with the parties to aid in resolving the differences, and, if the matter is not resolved, shall make a written report and recommendation within 30 days after the request.

(5) A copy of the report shall be sent to representatives of the public school employer and the employee organization.

(6) All costs of the impasse proceedings, including mediation, shall be shared equally by the public school employer and the employee organization.

(7) Notwithstanding any other provision of this subtitle, the public school employer shall make the final determination as to matters which have been the subject of negotiation, but this final determination] **THE BOARD SHALL WITHIN 10 CALENDAR DAYS:**

(I) REQUEST LAST AND BEST OFFERS FROM THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION, WHICH MAY NOT INCLUDE ITEMS OR TOPICS NOT PREVIOUSLY RAISED IN THE BARGAINING PROCESS; AND

(II) ORDER THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION TO COMMENCE MEDIATION WITHIN 14 DAYS AFTER THE BOARD'S DETERMINATION THAT AN IMPASSE HAS BEEN REACHED.

(2) THE LAST AND BEST OFFERS SHALL LIST SEPARATELY EVERY TERM OR CONDITION OF EMPLOYMENT IN DISPUTE AND THE DEMAND OF THE PARTY MAKING THE LAST AND BEST OFFER.

(3) WITHIN 5 CALENDAR DAYS AFTER AN ORDER TO MEDIATE, THE PARTIES SHALL SELECT A MEDIATOR BY:

(I) AGREEMENT; OR

(II) ALTERNATE STRIKING FROM A LIST OF SEVEN NEUTRAL PARTIES FURNISHED BY:

1. THE FEDERAL MEDIATION AND CONCILIATION SERVICE; OR

2. THE AMERICAN ARBITRATION ASSOCIATION.

(4) THE MEDIATOR SHALL CONCLUDE THE MEDIATION WITHIN 25 DAYS AFTER CONVENING THE FIRST MEDIATION SESSION.

(5) IF THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION DO NOT REACH AGREEMENT BEFORE CONCLUDING THE MEDIATION, THE MEDIATOR SHALL ISSUE A WRITTEN OFFER TO BOTH PARTIES AND THE BOARD OF SETTLEMENT OF ALL MATTERS RAISED.

(6) WITHIN 5 DAYS AFTER RECEIVING THE PROPOSED SETTLEMENT, THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION EACH SHALL NOTIFY THE MEDIATOR OF ITS INTENT TO:

(I) ACCEPT THE WRITTEN PROPOSED SETTLEMENT; ~~OR~~

(II) ACCEPT THE WRITTEN PROPOSED SETTLEMENT IN PART, AS MUTUALLY AGREED ON BY THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION; OR

~~(III)~~ (III) DECLINE THE PROPOSED SETTLEMENT AND REQUEST ARBITRATION BEFORE THE BOARD.

(7) THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION SHALL SHARE THE COSTS OF THE MEDIATOR EQUALLY.

(8) IF EITHER PARTY DECLINES THE PROPOSED SETTLEMENT AND REQUESTS ARBITRATION, THE BOARD SHALL, WITHIN 5 CALENDAR DAYS, SET A DATE FOR AN ARBITRATION HEARING BEFORE THE BOARD.

(9) THE BOARD SHALL:

(I) OPEN THE ARBITRATION RECORD WITHIN 20 DAYS AFTER RECEIVING EITHER PARTY'S DECISION TO DECLINE THE MEDIATOR'S PROPOSAL;

(II) CONVENE A HEARING;

(III) HEAR TESTIMONY FROM AND RECEIVE SUPPORTING WRITTEN EVIDENCE, AS PROVIDED IN AN ORDER OF THE BOARD, FROM THE PUBLIC SCHOOL EMPLOYER, THE EMPLOYEE ORGANIZATION, AND THE MEDIATOR;

(IV) ADMINISTER OATHS TO WITNESSES DEEMED RELEVANT AND CALLED BY THE BOARD;

(V) ISSUE SUBPOENAS TO COMPEL THE PRODUCTION OF RELEVANT AND NONPRIVILEGED DOCUMENTS AND OTHER TANGIBLE EVIDENCE THAT WOULD ALSO BE SUBJECT TO PRODUCTION BEFORE A HEARING OR AT A HEARING UNDER TITLE 10, SUBTITLE 6, PART III OF THE STATE GOVERNMENT ARTICLE; AND

~~(VI) DECIDE WHETHER TO HEAR EVIDENCE OFFERED THROUGH AN ATTORNEY; AND~~

~~(VII)~~ RECEIVE, HEAR, AND CONSIDER ALL EVIDENCE CONSIDERED RELEVANT BY THE BOARD, WHETHER OR NOT OFFERED THROUGH AN ATTORNEY, INCLUDING:

1. THE WAGES, HOURS, WORKING CONDITIONS, OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT OF SIMILAR PUBLIC EMPLOYEES IN COMPARABLE SURROUNDING JURISDICTIONS AND COMPARABLE JURISDICTIONS OUTSIDE THE STATE; AND

2. THE ABILITY OF THE PUBLIC SCHOOL EMPLOYER AND THE COUNTY SERVED BY THE PUBLIC SCHOOL EMPLOYER TO PAY ~~FROM THE COUNTY'S GENERAL FUND~~, CONSIDERING THEIR EXISTING RESOURCES, THE COSTS OF THE FINAL OFFERS PROPOSED AND OTHER PERSONNEL COSTS.

(10) THE BOARD SHALL CONCLUDE THE HEARING BY ISSUING A WRITTEN ORDER WITHIN 20 DAYS AFTER THE ARBITRATION RECORD IS OPENED.

(11) THE BOARD SHALL ISSUE THE WRITTEN AWARD THAT SELECTS AND ADOPTS:

(I) THE COMPLETE FINAL OFFER OF THE PUBLIC SCHOOL EMPLOYER;

(II) THE COMPLETE FINAL OFFER OF THE EMPLOYEE ORGANIZATION; OR

(III) THE MEDIATOR'S COMPLETE OFFER OF SETTLEMENT.

(12) THE BOARD'S WRITTEN AWARD IS FINAL AND BINDING ON THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION.

(13) THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION SHALL SHARE THE COSTS OF THE HEARING EQUALLY.

(14) ANY NEGOTIATED PROVISION OR DECISION OF THE BOARD is subject to the other provisions of this article concerning the fiscal relationship between the public school employer and the county commissioners and county council.

6-511.

If the fiscal authority does not approve enough funds to implement the negotiated agreement, the public school employer shall renegotiate the funds allocated for these purposes by the fiscal authority with the employee organization before the public school employer makes a final determination in accordance with the timetable and procedure established by the [State] Board.

SUBTITLE 8. PUBLIC SCHOOL LABOR RELATIONS BOARD.

6-801.

IN THIS SUBTITLE, "BOARD" MEANS THE PUBLIC SCHOOL LABOR RELATIONS BOARD ESTABLISHED UNDER § 6-802 OF THIS SUBTITLE.

6-802.

THERE IS A PUBLIC SCHOOL LABOR RELATIONS BOARD ESTABLISHED AS AN INDEPENDENT UNIT OF STATE GOVERNMENT.

6-803.

(A) THE BOARD SHALL CONSIST OF THE FOLLOWING FIVE MEMBERS APPOINTED BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE:

(1) ONE MEMBER WHO:

(I) REPRESENTS THE PUBLIC;

(II) HAS EXPERIENCE IN LABOR RELATIONS;

(III) IS NOT AN OFFICER OR EMPLOYEE OF A BOARD OF EDUCATION OR AN EMPLOYEE ORGANIZATION REPRESENTING PUBLIC SCHOOL SYSTEM EMPLOYEES;

(IV) IS NOT AN ELECTED OFFICIAL OF THE STATE, A COUNTY, OR AN EMPLOYEE ORGANIZATION REPRESENTING PUBLIC SCHOOL EMPLOYEES; AND

(V) IS KNOWN FOR OBJECTIVE AND INDEPENDENT JUDGMENT;

(2) TWO MEMBERS, INCLUDING ONE MEMBER CHOSEN FROM A LIST OF CANDIDATES SUBMITTED BY THE ORGANIZATION REPRESENTING A MAJORITY OF PUBLIC SCHOOL EMPLOYEES IN THE STATE FOR COLLECTIVE BARGAINING PURPOSES AND ANOTHER MEMBER CHOSEN FROM A LIST OF CANDIDATES SUBMITTED BY A STATEWIDE ORGANIZATION REPRESENTING PUBLIC SCHOOL EMPLOYEES IN AT LEAST ONE JURISDICTION WITHIN THE STATE FOR COLLECTIVE BARGAINING PURPOSES OTHER THAN THE MAJORITY ORGANIZATION UNDER THIS PARAGRAPH, WHO:

(I) ARE NOT EMPLOYEES OF THE STATE OR A PUBLIC SCHOOL EMPLOYEE ORGANIZATION; AND

(II) ARE KNOWN FOR OBJECTIVE AND INDEPENDENT JUDGMENT; AND

(3) TWO MEMBERS ~~OF THE EDUCATION OR BUSINESS COMMUNITY~~, CHOSEN FROM A LIST OF CANDIDATES SUBMITTED BY THE MARYLAND ASSOCIATION OF BOARDS OF EDUCATION AND THE STATE SUPERINTENDENTS ASSOCIATION OF MARYLAND, WHO:

(I) ARE NOT OFFICERS OR EMPLOYEES OF THE STATE OR COUNTY OR STATE BOARDS OF EDUCATION AND ARE NOT OFFICERS OR EMPLOYEES OF EMPLOYEE ORGANIZATIONS REPRESENTING EMPLOYEES OF PUBLIC SCHOOL SYSTEMS IN MARYLAND; AND

(II) ARE KNOWN FOR OBJECTIVE AND INDEPENDENT JUDGMENT.

(B) BEFORE TAKING OFFICE EACH MEMBER SHALL TAKE THE OATH REQUIRED BY ARTICLE I, SECTION 9 OF THE MARYLAND CONSTITUTION.

(C) THE PUBLIC SCHOOL LABOR RELATIONS BOARD SHALL ELECT A CHAIR FROM AMONG ITS MEMBERS.

(D) (1) THE TERM OF A MEMBER IS 5 YEARS.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON JULY 1, 2010.

(3) AT THE END OF A TERM A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REMAINDER OF THAT TERM.

(E) THE GOVERNOR MAY REMOVE A MEMBER ONLY FOR INCOMPETENCE OR MISCONDUCT.

6-804.

A MEMBER OF THE BOARD SHALL BE ENTITLED TO:

(1) COMPENSATION IN ACCORDANCE WITH THE STATE BUDGET;
AND

(2) REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

6-805.

THE BOARD SHALL SHARE AN EXECUTIVE DIRECTOR WITH THE HIGHER EDUCATION LABOR RELATIONS BOARD AND THE STATE LABOR RELATIONS BOARD.

6-806.

(A) THE BOARD SHALL ADMINISTER AND ENFORCE THE PROVISIONS OF SUBTITLES 4 AND 5 OF THIS TITLE.

(B) THE BOARD MAY:

(1) ADOPT REGULATIONS, GUIDELINES, AND POLICIES TO CARRY OUT THE RIGHTS AND RESPONSIBILITIES OF THE BOARD UNDER THIS TITLE; AND

(2) MAKE RECOMMENDATIONS FOR LEGISLATIVE ACTION REGARDING THE OPERATION OF THIS TITLE.

6-807.

(A) IN DECIDING MATTERS COVERED UNDER THE PROVISIONS OF SUBTITLES 4 AND 5 OF THIS TITLE, THE BOARD:

(1) MAY:

(I) CONDUCT HEARINGS;

(II) SUBPOENA WITNESSES AND DOCUMENTS;

(III) ADMINISTER OATHS;

(IV) TAKE THE TESTIMONY OR DEPOSITION OF A PERSON UNDER OATH; AND

(V) CONDUCT INVESTIGATIONS; AND

(2) SHALL DECIDE CONTROVERSIES AND DISPUTES.

(B) (1) IF A PERSON FAILS TO COMPLY WITH AN ORDER ISSUED BY THE BOARD, A MEMBER OF THE BOARD MAY PETITION THE CIRCUIT COURT TO ORDER THE PERSON TO COMPLY WITH THE BOARD'S ORDER.

(2) THE BOARD MAY NOT BE REQUIRED TO POST BOND IN AN ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(C) EACH HEARING AND DETERMINATION OF AN APPEAL OR COMPLAINT BY THE BOARD IS A CONTESTED CASE, SUBJECT TO THE PROVISIONS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(D) A PRIOR ORDER, ACTION, OR OPINION ISSUED BY THE STATE BOARD BEFORE THE ENACTMENT OF THIS SECTION MAY BE CONSIDERED AS PRECEDENT IN MATTERS ARISING AFTER THE ENACTMENT OF THIS SECTION, BUT IT IS NOT BINDING ON THE BOARD.

Article – State Personnel and Pensions

3–204.

(a) (1) The State Labor Relations Board, **THE PUBLIC SCHOOL LABOR RELATIONS BOARD**, and the State Higher Education Labor Relations Board jointly shall appoint an Executive Director of the boards.

(2) The Executive Director:

(i) is responsible to and serves at the pleasure of the boards;
and

(ii) is entitled to the salary provided in the State budget.

(b) The Executive Director shall perform the duties that the boards assign, including:

(1) operating the office of the boards; and

(2) keeping the official records of the boards.

(c) The Executive Director may hire any staff necessary to carry out the provisions of this subtitle.

(d) (1) With approval of the boards, the Executive Director may employ professional consultants.

(2) Each professional consultant serves at the pleasure of the Executive Director.

SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the members of the Public School Labor Relations Board shall expire as follows:

(a) one member in 2012;

(b) two members in 2013; and

(c) two members in 2014.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any negotiations requested or entered into before the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That nothing in this Act may be construed to prevent a party from appealing a final decision of the Public School Labor Relations Board to a circuit court.

SECTION 5. AND BE IT FURTHER ENACTED, That, on or before July 1, 2014, the Public School Labor Relations Board shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the implementation of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010. It shall remain effective for a period of 5 years and, at the end of June 30, 2015, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 4, 2010.